Gold Kist, Inc. *and* United Food and Commercial Workers Union, Local 1996, AFL–CIO. Case 12–CA–21196, 12–CA–21213, and 12–RC–8553

May 27, 2004

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND WALSH

On October 15, 2001, Administrative Law Judge George Carson II issued the attached decision.[*] The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief and cross-exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions[1] and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order as modified.[3]

1. More closely monitoring union activity

In mid-September 2000,[4] employee Brenda Preston passed out union leaflets at the Respondent's plant gate during shift change. During the first week of October, her supervisor, Eric Mady, approached her while she was working and told her that he was watching every move that she was making. He added that he had not seen her at work on a previous day. Preston replied that she had left early because of a doctor's appointment. Mady repeated that he had his eye on her and that he was watching every move that she made. Based on Mady's statements, the judge found, and we agree, that the Respondent violated Section 8(a)(1) of the Act by more closely monitoring employees who had engaged in union activity.

The Respondent contends that the judge erred in finding that Mady himself had observed Preston pass out union leaflets at the plant gate. Preston testified that Mady had passed within 16 feet of her when she was passing out leaflets. The judge found that Mady did not deny observing Preston passing out leaflets. The judge erred in this finding, as Mady, in his testimony, did deny observing Preston passing out leaflets. The judge's error is inconsequential, however, as Mady need not have personally seen Preston distributing leaflets for his subsequent statements to her to be unlawful. Rather, as Preston publicly engaged in distribution of union leaflets at the plant gate during shift change in mid-September, her open union activity would have been easily observable by the Respondent's supervisors and managers at that time, which was prior to early October, when Mady made the statements in issue.[5]

2. Threats of the inevitability of strikes and strike violence

We affirm the judge's finding that the Respondent unlawfully threatened its employees with the inevitability of strikes and strike violence if they chose to be represented by the Union.

a. Facts

Respondent Corporate Manager of Labor Relations Bruce Crawford conducted a series of formal meetings with the employees held in the plant conference room during the week before the representation election. Respondent Plant Manager Chris Johnson attended each of these meetings. In earlier meetings, Crawford had told the employees that the Union thrives on hostility and that in order for the Union to justify its existence, it had to drive a wedge between management and the employees. In the meetings during the week before the election, Crawford told the employees that strikes were the Union's only weapon to win the Respondent's agreement to the Union's proposals, and that violence was likely to occur during a strike.

[*] In the case caption and the body of his decision, the judge inadvertently used an erroneous case number in reference to the representation case at issue here. The correct case number is 12–RC–8553. We modify the decision accordingly.

[1] There are no exceptions regarding the complaint allegations that the judge dismissed or the election objections that he overruled.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] In sec. II,C,5 of his decision, the judge found that the Respondent violated Sec. 8(a)(1) of the Act by threatening the withdrawal of an existing condition of employment if the employees selected the Union as their bargaining representative. The judge, however, failed to include this violation in his conclusions of law, recommended Order, or notice to employees. The General Counsel has excepted to this failure. We grant the General Counsel's exception and amend the judge's conclusions of law, modify the recommended Order, and provide a new notice to employees to rectify the judge's inadvertent omissions. We also modify the judge's recommended Order to include the revised records preservation provision set forth in our decision in *Ferguson Electric Co.*, 335 NLRB 15 (2001).

[4] All dates are in 2000, unless otherwise indicated.

[5] See *Enjo Contracting Co.*, 340 NLRB No. 162 (2003) (employee Clayton's open union activity right outside the shop, at a nearby coffee shop, and while sitting in car across the street from the shop would be easily observable by employer's supervisors and managers).

A video was shown in the meetings during the week before the election. It showed violence that occurred during a strike called by the Union 11 years before at the Respondent's Trussville, Alabama plant. The video also included a dramatic reenactment of the violence that had been produced and shown by a local television station. The video included a picture of a bullet hole in a car, accompanied by the sound of a gunshot. While showing the video, Crawford pointed out to the employees in the meeting that the employees in the video were throwing rocks at a bus and trying to cut its tires. The video also included the sound of the rocks hitting the bus.

After showing the video, Crawford showed the employees slides. The slides showed a car with a bullet hole in it, a bus with shattered windows, and a young man with a bandage on his neck. Another slide said:

BARGAINING RESULT?
Reach an agreement on terms acceptable to the Company.
Union walks away and leaves.
Union calls STRIKE!

Another slide said:

UFCW STRIKE
Will it happen here??
Make sure it does not happen to you –
Vote NO union
Vote NO union strikes!!

Around the same time as these meetings, the Respondent put up posters in the plant: on the doors, in the employee break room and also near the time clocks. The posters measured approximately 28" by 24." One poster showed some of the slides from the meeting: the car with the bullet holes, a man holding a baseball bat in a batting stance, the man with the bandaged neck, and the school bus with the shattered windows. The message across the top of the poster was:

UFCW UNION STRIKE
AT TRUSSVILLE, AL PLANT

The pictures in the poster were annotated **"BULLET HOLES IN CARS;" "SHATTERED WINDSHIELDS;"** and **"WOMAN SHOT WHILE RIDING TO WORK."** The message at the bottom of the poster was:

VOTE NO VIOLENT STRIKES
VOTE NO UNION!

Another poster said that the Union had struck five other Respondent plants, that two of them were now closed, and that in return for striking, the employees got: **"Lost paychecks. Violence (Acid on cars. Windshields shattered. Cars shot into. Woman shot.) Some employees lost their jobs."** The message at the bottom of the poster was:

Don't let it happen here.
VOTE NO UNION!

b. Analysis and Conclusion

It is a violation of Section 8(a)(1) of the Act for an employer to warn employees that there will be strikes and violence if they choose to be represented by a union. *Garry Mfg. Co.*, 242 NLRB 539, 542 (1979), enfd. 630 F.2d 934 (3d Cir. 1980). There, in a flyer entitled "It Could Happen Here," the employer unlawfully warned the employees about strikes and strike violence if the union won election. Specifically, the flyer listed several instances of violence as reported in local newspapers and warned the employees: "If you want the threat of strikes and violence and constant turmoil in our plant, vote for District 65." In *Grove Valve and Regulator Co.*, 262 NLRB 285 (1982), the employer violated Section 8(a)(1) by warning its employees that strikes were inevitable. Specifically, the employer told the employees that it thought that the risk of a strike and job loss, or plant relocation, was especially real because the employer's wages and benefits were already so good.

Here, the Respondent clearly created a reasonable impression in the minds of its employees that if they elected to be represented by the Union a strike was inevitable, and that it was likely to be a violent one. Indeed, Crawford expressly told the employees that a strike was the Union's only weapon to win the Respondent's agreement to the Union's proposals, and that such a strike was likely to be violent. Moreover, in support of the implanted notion that a strike was inevitable if the Union won the election, Crawford told the employees that the Union thrives on hostility and that it could justify its existence only by driving a wedge between the Respondent and its employees.

To further implant the idea that a strike was inevitable, one of the Respondent's slides informed the employees that if the Union were unable to win the Respondent's agreement to a contract – "on terms acceptable to the Company" – then the Union would either abandon the employees ("walk away and leave") or "call [a] STRIKE!"

To reinforce the expectation that such a strike would, in turn, be violent, the Respondent showed the employees video footage of violence during a Union strike at one of the Respondent's other plants 11 years earlier, and post-video slides and posters showing a car with bullet holes, the bus with shattered windows, the man with a bandaged neck, and a man with a baseball bat. To buttress the threat of strike violence conveyed by the video, the slides, and the posters, the Respondent annotated the

posters with descriptions of the pictures and with a reference to a "WOMAN SHOT WHILE RIDING TO WORK," not pictured on the poster. And in another poster, the Respondent told the employees that in return for striking, employees represented by the Union at other Respondent plants got, inter alia, "Violence (Acid on cars. Windshields shattered. Cars shot into. Woman shot.)"

It is clear from the above conduct that the Respondent created a reasonable impression of the inevitability of a violent strike if the employees selected the Union as their bargaining agent. The Respondent was not attempting properly to influence the employees to the Respondent's view by reason, but rather was aggressively appealing to the employees' predictable and understandable fear of a strike and violence. The judge found, and we agree, that by doing so the Respondent interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed by Section 7 of the Act, and therefore violated Section 8(a)(1) of the Act.

Amended Conclusions of Law

1. By soliciting grievances and promising to remedy them in order to dissuade employees from supporting the Union, by threatening the loss of benefits and the inevitability of strikes and strike violence if employees selected the Union as their collective-bargaining representative, by more closely monitoring and restricting the movement of prounion employees, by threatening that other employers would refuse to hire employees because of their union activities, and by threatening the withdrawal of an existing condition of employment if the employees selected the Union as their bargaining representative, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By depriving employee Brenda Preston of overtime work the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and orders that the Respondent, Gold Kist, Inc., Douglas, Georgia, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(f) and reletter the subsequent paragraphs.

"(f) Threatening the withdrawal of an existing condition of employment if the employees selected the Union as their bargaining representative."

2. Substitute the following for paragraph 2(b).

"Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order."

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. May 27, 2004

Wilma B. Liebman, Member

Peter C. Schaumber, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT solicit your grievances and promise to remedy them in order to dissuade you from supporting the Union.

WE WILL NOT threaten you with the loss of benefits or that strikes and strike violence are inevitable if you select the United Food and Commercial Workers Union, Local

1996, AFL–CIO, or any other labor organization as your collective-bargaining representative.

WE WILL NOT more closely monitor and restrict the movement of prounion employees.

WE WILL NOT threaten that other employers would refuse to hire you because of your union activities.

WE WILL NOT threaten to withdraw existing conditions of employment if you select the Union as your bargaining representative.

WE WILL NOT deprive you of overtime because you support the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL make Brenda Preston whole for any loss of earnings and other benefits suffered as a result of our discrimination against her.

GOLD KIST, INC.

George S. Aude and *Evelyn M. Korschgen, Esqs*., for the General Counsel.

Thomas T. Hodges and *Glenn L. Spencer, Esqs*., for the Respondent.

Lesley Troope, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

GEORGE CARSON II, Administrative Law Judge. This case was tried in Douglas, Georgia, on July 23 through 25 and August 14 through 16, 2001,[1] pursuant to a consolidated complaint that issued on May 31, 2001.[2] The complaint, as amended, alleges various violations of Section 8(a)(1) of the Act and the discriminatory reduction of overtime of Brenda Preston in violation of Section 8(a)(1) and (3) of the Act. On June 6, 2001, the Regional Director issued an order that directed a hearing on objections in Case 12–RC–8663 and consolidated that case for hearing with the unfair labor practice cases. Respondent's answer denies all violations of the Act. I find, with certain exceptions, that the Respondent did violate the Act as alleged in the complaint.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Respondent, and the Charging Party, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Gold Kist, Inc., hereinafter referred to as the Company, is a Georgia corporation engaged in the business of poultry processing at various locations including its plant at Douglas, Georgia, from which it annually sells and ships products valued in excess of $50,000 directly to customers located outside the State of Georgia. The Respondent admits, and I find and conclude, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits, and I find and conclude, that United Food and Commercial Workers Union, Local 1996, AFL–CIO (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

At the Company's Douglas processing plant, poultry is slaughtered, cleaned, cooled, and processed by the approximately 1200 employees who work at the plant. The Plant Manager is Chris Johnson, a position he had held since September 1999. In November, the Company employed approximately 900 employees with additional labor provided by 300 employees of Staffmate, a temporary agency.

The Union began organizational activity in Douglas in the summer of 2000. In July, Plant Manager Johnson learned that a representative of the Union was staying at a local motel.

On September 14, the Company advised all employees by letter that prices for chicken had depressed the market, that managers' salaries were going to be reduced, and that employee pay increases were being suspended "until earnings return to acceptable levels." Employees were also advised that their share of medical insurance premiums was being raised and benefits were being reduced.

The representation petition was filed on September 27. A Stipulated Election Agreement was approved on October 5. Staffmate employees were not included in the appropriate unit. Thereafter, the Company held a series of meetings with its employees. The election was held on November 8. The tally of ballots reflected that Union received 345 votes whereas 523 employees voted for no representation.

The complaint alleges that, at the Company meetings, company officials solicited grievances and impliedly promised to remedy them if the employees did not vote for the Union, threatened a loss of benefits if employees voted for the Union, and threatened the inevitability of strikes, strike violence, and job loss. Certain posters that were put up after these meetings are alleged to have reiterated the threats. A video shown to Spanish speaking employees is alleged to have threatened those employees that, if there were a strike, employees would lose their jobs. At the final meetings prior to the election, Division Manager Carlyle Ragans is alleged to have promised a wage increase if the employees voted against the Union.

The complaint also alleges 8(a)(1) violations not connected to the meetings and one 8(a)(3) violation, the reduction of overtime assigned to employee Brenda Preston.

This decision shall address the allegations arising from the meetings and posters, the remaining Section 8(a)(1) complaint allegations, the Section 8(a)(3) allegation relating to Preston's overtime, and the objections to the election that are not coextensive with any complaint allegation, in that order.

[1] All dates are in 2000 unless otherwise indicated.

[2] The charge in Case 12–CA–21196 was filed on November 16, and the charge in Case 12–CA–21213 was filed on December 11. Both charges were amended on May 1, 2001.

B. The Meetings, Posters, and Spanish Language Video

1. Facts

Beginning on October 11, the Company began holding a series of meetings with employees in the plant conference room. Thirty or more employees were typically present at each of these meetings, which were held over a period of 4 weeks, and some 20 to 25 meetings were held each week so that company officials could address the more than 900 unit employees. Four of these meetings each week were for Spanish speaking employees. The chief spokesperson at these meetings was Bruce Crawford, former corporate manager of labor relations for Gold Kist. Plant Manager Chris Johnson was present at each of these meetings, although he would sometimes have to leave to attend to matters in the plant. Occasionally other supervisors or managers would be present.

At the first series of meetings, held on October 11, 12, and 13, Johnson spoke about the upcoming election, informed the employees who would be eligible to vote, and introduced Crawford and explained who he was. Crawford then gave a brief overview of the issues that he would be addressing over the next 3 weeks: union dues, collective bargaining, and strikes.

The second series of meetings, conducted between October 17 and 20, dealt with the amount of union dues and salaries of union officials. Employee Loretta McLean recalls that, at the session she attended, an employee asked Crawford how much he made and that Crawford replied, "My salary is not here to be discussed."

At the third series of meetings, held on October 24 through 27, Crawford explained the process of collective bargaining. A video was shown. Crawford projected overhead transparencies comparing the benefits of employees at Douglas with a Gold Kist unionized facility in Live Oak, Florida. The benefits at Douglas were superior to those at Live Oak.

The fourth series of meetings, conducted from October 31 through November 3, dealt with strikes. A video was shown depicting strike violence during the course of a strike at the Gold Kist plant in Trussville, Alabama. The video included local news reports that had been edited to include the sound of a gun being fired when the camera showed what appeared to be a bullet hole in a vehicle. After the video, Crawford projected overhead transparencies that included a picture of a car with what appeared to be a bullet hole in it, a picture of a bus with shattered windows, and a picture of a young man with a bandage on his neck under his left ear.

A fifth series of meetings was held on November 6 and 7. These meetings involved larger numbers of employees in order to address as many employees as possible in as few meetings as possible. Division Manager Carlyle Ragans was present and spoke, as did Johnson and Crawford. Employee Eddie Parker recalls asking Johnson if there was anything the Union could "do for [us]," and Crawford replied, "Absolutely nothing."

Both Johnson and Crawford acknowledged that, at each meeting, they summarized the substance of the remarks they had made at previous meetings. This acknowledgement accounts for the uncertainty of various witnesses concerning whether an alleged comment heard during the meeting they attended was made at the second, third, or fourth series of meetings. Crawford acknowledged that, even though strikes were not the subject of the first 3 weeks of meetings, strikes were "briefly talked about" in each of the meetings and that he informed the employees that "it was a possibility of strikes anytime you had to bargain, that that was the Union's only weapon to made the Company agree to what they wanted."

Johnson admitted that at all the meetings, except the ones held on November 6 and 7, there would be between 10 and 20 minutes at the end for discussion. "I asked for questions or comments or concerns." At some meetings "we'd have to basically drag it out of someone to get anything out of them. [At] [o]thers, we didn't have enough time to take them all …." Johnson gave examples of concerns raised by employees including bathroom breaks and payroll matters. He noted that "[q]uite a bit of the concerns and comments were directed toward our human resources department in that people didn't feel like they could go to our human resources manager and talk to him. He wouldn't work with them and deal with them." Johnson reported these concerns to Division Manager Carlyle Ragans, to whom the human resources manager reported, and the employment of the human resources manager ended after the first or second week of meetings. Johnson requested Ragans to send former Human Resources Manager George Crawford to Douglas, and Ragans did so. At the last meetings, on November 6 and 7, Johnson made it a point to tell the employees that he had asked Ragans to bring Crawford in after the things he, Johnson, "was learning" at the meetings, and that George Crawford was "going to be very instrumental" in choosing the next human resources manager.

At one meeting, Johnson did not recall which, some employees questioned why union advocate Brenda Preston was permitted to walk through their department. Thereafter, Preston was directed not to do so.

Jose Ponce attended a meeting with Hispanic employees at which several of those employees reported to Johnson that they were receiving abuse from their supervisors, "[t]hey had been humiliated." Johnson "made a commitment to pay more attention to the problems of the Hispanic employees. He promised that, if the Union did not come in, that each month he would have a … special meeting with the Hispanic employees to talk about their needs and address their concerns." Johnson further stated that, if the Union did come in, "he would have nothing to do with the employees because you would have to have your dealings . . . through the Union." Johnson did not deny making the foregoing statements.

Employee Loretta McLean, after the meeting on November 6, at which there had not been a discussion period, approached Johnson regarding having trouble getting off of her line to go to the bathroom. Johnson stated that he would check on it for her. The following day, Tuesday, Johnson came by her line and asked her how everything was going.

Employee Diane Mizell recalled that, at the third meeting she attended, employees were complaining to Johnson regarding the manner in which supervisors talked to them and different jobs to which they did not get assigned. Johnson responded that he "wasn't aware that all of that was going on and if we would just give him a chance to straighten things out . . . that his door would be open for us anytime that we wanted to talk."

Employee Hattie Deese testified that she raised the matter of seniority with Johnson regarding getting a better job in the plant. Johnson did not respond directly to her but said that "a lot of things were going on that he didn't know about and that he would make our job better."

Employee Oliver Hemphill recalls employees raising concerns regarding breaks and what they perceived as unfair treatment by supervisors. Johnson stated that he was going to look into those problems.

At the final series of meetings on November 6 and 7, Johnson stated that he had been unaware of the problems brought up at the meetings, "whether it's from me having my head stuck in the sand, or whatever," and that he now knew what he needed to change, that he could not "correct what happened in the past, but I can work on the present, and we're dedicated to making that happen."

Regarding wages and benefits, Employee McLean testified that Crawford referred to a "green book" and stated that "once the union c[a]me in that we would lose our health benefits, pension, and the life insurance." On cross examination she acknowledged that employees at Douglas have no pension benefits. Johnson identified the green book as *Agristats*, a book used in the industry, and testified that he used this book to cite wage comparisons.

Employee Brenda Preston recalled that, when Crawford projected an overhead transparency that stated that bargaining was a two way street, he stated, "If the Union came in … we would go down." She then testified that he also said, "If the Union c[a]me in our pay rate will go down too," and that he said this in all of the meetings.

Hispanic employee Jose Ponce understands some English. Although he attended three of the five meetings held with Spanish speaking employees, Ponce testified that he listened to Johnson in English, not the translator. At the second meeting, which he attended with his wife, Ponce did not recall Crawford saying anything. He recalled Johnson stating that, if the Union came in, "things would go backwards and we would be below where we are now." When asked to elaborate upon this on cross examination, Ponce testified that Johnson stated that the employees had good wages and, "if the Union comes in, we won't have the same benefits because the Union will decide what we will get . . . [and] the Union is only trying to benefit itself." In further testimony, Ponce acknowledged that Johnson stated that "it was possible that once the Union negotiated with the Company that there would be an increase in wages."

Employee Elsa Ponce, wife of Jose Ponce, has no facility in English. She attended two meetings. In the first, she recalls that Marcella Acosta, an employee in the Human Relations Department who translated at the meetings of Spanish speaking employees, translated for Crawford and stated, if the Union came in, "our wages would be reduced … insurance rates would go up, and the benefits would go down." On cross examination she stated that union officials earned a high wage "and that's why they would have to reduce our wage." Mrs. Ponce recalled that the cost of insurance for employees at Douglas increased and that benefits had been reduced after the election. In fact, the employees had been advised of the increase in cost and reduction of benefits effective on October 1, by letter dated September 14.

The employees noted above who testified to direct statements relating to loss of wages and benefits heard exactly what the Company wanted them to hear. Notwithstanding what the employees believed they had heard, there is no probative evidence that the statements to which the employees testified were actually made. Rather, the employees testified to the impression with which they were left after the Company's presentations. Careful review of the testimony reflects that none of the statements are mutually corroborative. McLean testified to loss of pensions, a benefit the employees do not enjoy. Preston initially testified that Crawford stated "we would go down," and then added that he also said "wages would do down." She did not mention benefits. Although Jose Ponce initially testified that Johnson said "we would be below where we are now," he later acknowledged that he also said "it was possible … there would be an increase in wages." Elsa Ponce, who attended this same meeting, reported no statement relating to being "below what we are now," but recalled hearing that "our wages would be reduced." She placed this statement in the context of payment of high salaries to union officials. No employee corroborated her testimony relating to insurance and it appears that she simply confused the Company's September 14 announcement with a comment in the presentation.

The Company's presentation during the third series of meetings cited data from selected union contracts, all of which reflected wages and benefits inferior to those at Douglas. Although, as I have found, none of the explicit statements to which the employees testified were made, loss of benefits was implicit in the presentation. Counsel for the General Counsel questioned Crawford regarding the specific content of his remarks and Crawford responded as follows:

> Q [W]hat did you tell the employees regarding bargaining?
>
> A. Well, my theme was in bargaining everything is negotiable, and that it's a give-and-take process and that it's a two-way street. You give up something to get something and vice versa, and that it can be risky to employees because no one knows how bargaining will turn out. Neither the Company or the Union knows what we're going to come out with.
>
> Q. And during your speeches to employees, did you tell them that they could end up with greater benefits than they had previously?
>
> A. Yes, that was a possibility. They could stay the same. They could get more, or they could come out with less.
>
> Q. And what examples did you give employees of greater benefits they could get as a result of bargaining?
>
> A. Well, for instance, if the union wanted to give up something that would save us some money, something else could be enhanced.
>
> Q. Well, apart from giving up something, were there any examples given where the union did give up something but were able to achieve an increase in benefits as a result of bargaining?

A. Not that I recall, no.

Q. Now, . . . isn't it true that you told employees that the only way the Union would be able to get something for you is if they gave up something that you already had?

A. Yes.

. . . .

Q. During your presentation to employees, you showed them the Live Oak benefits. And isn't it true you told them that if the Union gets in here, there's no reason to believe that the company is going to give them anything more than what the employees received at Live Oak?

A. I – yes.

. . . .

Q. Isn't it true that the theme that was presented to employees during your presentations was that if the Union comes in, that they would have to put you on strike because the benefits you are getting are greater than those that are at other unionized plants?

A. No, that wasn't the theme. All I said was that a strike is a possible outcome of bargaining.

Notwithstanding this answer, Crawford admitted that he informed the employees that a strike was "the Union's only weapon to make the Company agree to what they wanted."

Although Crawford was aware that the Union had obtained a first contract without a strike at the Company's Carrolton, Georgia, plant, he acknowledged that he did not mention Carrolton "other than it was a bargaining unit."

Following the third series of meetings, the Company posted 22 by 28 inch posters comparing wages and benefits at Douglas and selected other Gold Kist plants with the caption "Don't Settle For *Less* … Vote *NO* UNION." Another poster comparing insurance benefits at Douglas and the Gold Kist plant at Live Oak, bears the caption "Don't Risk Your Insurance… Vote *NO* UNION."

At the fourth series of meetings, Crawford projected an overhead transparency entitled "Bargaining Result" that states three options: "Reach an *agreement* on *terms acceptable to the Company*; Union *walks away* and leaves; *STRIKE!*"

Regarding strikes, employee Mizell recalled that Crawford used the overhead projector to show pictures of damage to vehicles and of an injured person at the Trussville, Alabama, plant. She testified that Crawford then stated that "this could happen to us."

Employee Preston recalled that Crawford stated that the Union could cause employees to go on strike, but she corrected him stating that the employees "have to make that decision." As he was showing the pictures Crawford stated, "Don't let this happen… to you."

Employee Oliver Hemphill recalls that Crawford stated that, if the union came in, "it could get very ugly. It could become a riot, violence cold break out, stuff like that."

Employee Nestor Galvez, who testified through an interpreter, attended meetings with Spanish speaking employees. Unlike employee Ponce, who understood what Johnson was saying in English, Galvez relied upon the translation. He recalled hearing that, "if they went on strike, the company had to continue working [and would] … hire some other employee[s], and by them going on strike, they were going to be laid off or be fired." He acknowledged that he also heard that, if they went on strike "the strikers would be replaced." Counsel for the General Counsel urges me to draw an adverse inference since the Respondent did not call Acosta, the interpreter, to testify. I decline to do so. No other employee testified that Johnson ever used the word fired. In the absence of corroboration, I find that Galvez's reference to "laid off or fired," was his conclusion regarding the status of replaced employees.

Jose Ponce testified that, after the strike video was shown, Johnson informed the employees that they needed to be "really careful; that there could be a lot of consequences. We could lose our work, our family, our home, our car. Elsa Ponce, who relied upon what the interpreter said, testified that these comments were made as consequences of a strike "because you wouldn't be able to work."

The Spanish language video, when addressing strikes, notes that "workers who go on strike for economic reasons can be permanently replaced." Review of the transcript of the video reveals no unlawful threat of job loss in the content of the video, and neither the General Counsel nor the Charging Party cite any alleged unlawful threat in their briefs.

Following the fourth week of meetings, the Company posted 22 by 28 inch posters that reproduced several of the pictures shown at the meetings, including two of cars with a bullet hole, the bus with shattered windows, and the young man with the bandage on his neck under his left ear. Lest any employee fail to notice, the statement "bulletholes in cars" is printed between the pictures of the cars with arrows on the picture pointing out the bullet holes. The caption on this poster is "Vote *NO* Violent Strikes, Vote *NO* UNION." Another poster lists five Gold Kist plants at which strikes had occurred and asks what the employees got for striking. The question is answered as follows: "*Lost paychecks. Violence (Acid on cars. Windshields shattered. Cars shot into. Woman shot.) Some employees lost their jobs*." This poster bears the following caption: *Don't let it happen here*. VOTE *NO* UNION." Johnson did not testify when this poster was first posted, but employee McLean recalled that it was posted for 2 weeks beginning the second week of October. Employee Eddie Parker recalled that three of the strike violence pictures, a car with a bullet hole, the bus with shattered windows, and the injured young man were displayed in a locked glass bulletin board with the caption "Don't let this happen" the days immediately prior to the election. Employee Diane Mizell, who also testified to seeing these pictures, stated in an affidavit that the caption was not present on the day of the election. Johnson did not deny that the pictures were posted in the glass bulletin board. He was asked "if the pictures . . . were posted . . . with the words "Don't let this happen to you," and he responded, "No, they were not." Although both Johnson and Crawford denied specifically stating that a strike was inevitable or "Don't let this happen," it is undisputed that the poster referring to acid on cars, windshields shattered, etc. bore the caption "Don't let it happen here."

At the final group of meetings, on November 6 and 7, immediately before introducing Bruce Crawford to explain the election procedure, Johnson stated that he wanted to thank the employees, "especially . . . the people who voiced their opinions,

… it helped me a great deal, not only about what's going on in the plant, but about myself and what I need to change. . . . Now whether it's from me having my head stuck in the sand, or whatever I wasn't aware of, I can't correct what happened in the past, but I can work on the present, and we're dedicated to making that happen."

Crawford explained the election procedure, noting the presence of observers, and the checking off of names on the voting list. He then introduced Division Manager Carlyle Ragans.

Ragans referred to the economic challenges of the poultry industry and stated that he could "not stand up here and promise you a wage increase, or promise you anything else until we get this election on the Union out of the way Wednesday. And I'm not going to do that, in no way am I going to violate any rules. But I can tell you this, that I consider myself a fair person, and I believe in rewarding people that have done a good job during tough times, and those that have helped bring about success in this Company." Ragans continued, stating:

> Chris Johnson has my, has my backing 100%. He made some big commitments to y'all this morning. … He wants to do what's right. He wants to see that everyone here is treated fairly and with respect. And I'm here as his supervisor to tell you that I support that commitment 100% And I intend to see that not only Chris, but we both live up to that commitment. He's not going to let you down, and I'm not going to let you down."
>
> Johnson concluded the meeting. He asked the employees to vote no and then stated:
>
> A vote no will give us the opportunity to continue to work on the things that we've been working on the last several weeks. We'll get these personnel issues behind us. We'll get supervisors and managers doing what's right, and where they need to be. A vote no will mean a lot to me personally. I feel that a vote no [will] tell me that you have confidence in me to get this straightened out. Fourteen months ago, Carlyle had the confidence to bring me back here to get this plant straightened out financially. We've gone from number 12 out of 12 to number 6.[3] It took 14 months to make that happen. It will not take very long to straighten out personnelwise. I'm dedicated to make sure that happens. I pledge to you I'll do everything in my power, I will do what needs to be done to make these things happen, and I would appreciate your support on Wednesday.

Employees Loretta McLean, Diane Mizell, and Oliver Hemphill testified that the meetings held during the weeks prior to the election were the first occasion in which employees had been permitted to participate in an open forum and raise their concerns with management. Hemphill acknowledged that he had attended safety meetings that had been instructional in nature, not an open forum. Johnson testified that he had instituted what he referred to as "harmony sessions" shortly after he became plant manager in September 1999, but there was no announcement to employees that these had been instituted. Those sessions were held once each month for about 12 employees from each shift. Respondent's witness, employee Alice Nutt, testified that the employees would have pizza and something to drink and would discuss "what we could do to improve our company, . . . work areas, safety, things that we considered safety hazards or . . . occasionally morale amongst the employees." On cross examination Nutt acknowledged that "[b]asically that's what it was, safety." Nutt admitted that the first time she heard the term "harmony session" was the week before this hearing when the attorney asked her about harmony sessions. Nutt testified that she did not understand "because I didn't never hear it called that before." Even if matters other than safety were occasionally raised at these meetings with a limited number of employees, an employer may not rely on such past practice if it "significantly alters its past manner and methods of solicitation [of grievances] during the union campaign." *House of Raeford Farms*, 308 NLRB 568, 569 (1992).

2. Analysis and concluding findings

The complaint alleges that Plant Manager Johnson solicited grievances and impliedly promised to remedy them. Johnson admits that during the discussion period following the meetings, he "asked for … concerns," and sometimes would have to "drag it out of someone." In these meetings, Johnson learned that the human resources manager had not been responsive to employee concerns, and the manager was replaced. When Johnson leaned that Hispanic employees felt "humiliated" he promised to meet with them once a month. When employees complained about union adherent Preston walking through their department, Johnson put a stop to it. Thereafter, on various occasions, he informed the employees that he "wasn't aware that all of that was going on" and asked for "a chance to straighten things out," a litany he repeated on November 6 and 7, when he stated that his head had been in the sand.

Respondent argues that Johnson made no specific promise regarding "how he would straighten things out," and that his agreement to meet with Hispanic employees was only an agreement "to listen." Contrary to this argument, I find that Respondent's agreement to listen was, standing alone, a commitment, a promise, to become more responsive to the concerns of these employees. Ponce's testimony is undenied that Johnson agreed, if the Union was rejected, that he would have a monthly meeting with the Hispanic employees "to talk about their needs and address their concerns." The absence of a specific promise is not dispositive of this allegation. The appropriate inquiry is whether, under all the circumstances, Respondent's actions implied that employees' complaints would be addressed if they rejected the Union. Johnson, in his closing remarks on November 6 and 7, asked for the opportunity "to continue to work on the things that we've been working on the last several weeks," i.e. the grievances that he had elicited during the discussion periods following the Respondent's antiunion presentations. In so doing, Johnson clearly implied that "management would react favorably to the underlying problems that gave impetus to the organization drive." *Kinney Drugs*, 314 NLRB 296, 299

[3] The parties stipulated to the accuracy of a transcript of a tape of this meeting except for the number Johnson used at this point. I listened to the tape in the presence of all parties and found that he stated that the Douglas plant had improved to number 6. The parties stipulated that, on the tape of another meeting, he said that the Douglas plant had improved to number 2.

(1994).[4] Although Ragans asserted that he could make no promises, he referred to the "commitments" that Johnson had made, noting that Johnson wanted "to see that everyone here is treated fairly and with respect," a specific concern raised at the meetings, and stated that he supported Johnson's commitments 100 percent. I find that the Respondent solicited grievances from its employees and, by its actions regarding the human relations manager, agreement to meet with its Hispanic employees to address their concerns, and commitment "to continue to work on the things that we've been working on the last several weeks," implied that it would remedy employees' grievances if they rejected the Union and, in so doing, the Respondent violated Section 8(a)(1) of the Act. *Reno Hilton*, 319 NLRB 1154, 1156 (1995).

The complaint alleges that, on various dates prior to the November 8 election, Crawford threatened a loss of benefits if employees voted for the Union. I have found no explicit threat of reduction of benefits, but Crawford's presentation unmistakably conveyed the impression that, if the employees selected the Union, they would not be as well off. Crawford admitted that he informed the employees that "the only way the Union would be able to get something for you is if they gave up something that you already had," and that he further told the employees that, "if the Union gets in here, there's no reason to believe that the Company is going to give them anything more than what the employees received at Live Oak." The overhead projections and posters reflect that wages and benefits at Live Oak were inferior to those at Douglas.

The complaint further alleges that, at the Company meetings, on various dates prior to the November 8 election, Johnson and Crawford threatened employees with the inevitability of strikes, strike violence, and job loss.

At the fourth series of meetings, at which Johnson was present, Crawford projected the overhead transparency entitled "Bargaining Result" that states three options: "Reach an *agreement* on *terms acceptable to the Company*; Union *walks away* and leaves; *STRIKE*!"

Crawford showed a video, augmented with the sound effect of a gun being fired, that depicted damage to property and an injured person. Following the video, he projected overhead transparencies that showed property damage and an injured young man. Since the second week in October, the Respondent had posted a poster referring to "*Lost paychecks. Violence (Acid on cars. Windshields shattered. Cars shot into. Woman shot.) Some employees lost their jobs.*" The poster concludes, "*Don't let it happen here.* VOTE *NO* UNION." These written references to violence were made explicit at the fourth series of meetings by the video and pictures. Thereafter the Respondent posted the same photographs it had presented at the meetings on posters and in a locked bulletin board: bullet holes in cars, a bus with shattered windows, and a young man with a bandage on his neck under his left ear. Whether the "Don't let it happen here" caption that employee Parker recalled was printed with the pictures or whether Johnson or Crawford said this during a meeting is immaterial. The Respondent had already published that message to all employees, suggesting that selection of the Union was synonymous with violent strikes and that the only way to avoid this was to "VOTE *NO*." See *The Singer Co.*, 160 NLRB 765, 784–785 (1961).

The foregoing evidence establishes that the employees were presented with a Hobson's choice: Accept a reduction in benefits or strike. The Respondent's brief argues that Board precedent permits an employer to discuss the uncertainty of bargaining. I agree. Here, however, the Respondent's former manager of labor relations advised the employees that there was no reason to believe that the Company would give "anything more than what the employees receive at Live Oak," and, if the parties did not agree to terms acceptable to the Company, the Union had two options, it could "walk away" or strike. Crawford never informed the employees that the Company and Union had agreed to an initial contract at Carrolton, Georgia, without a strike. He did not mention that "minds can be changed by discussion, and that skilled, rational, cogent argument can produce change without the necessity for striking." *Amerace Corp.*, 217 NLRB 850, 852 (1975). He cited two options, walk away or strike.

As in *Riley-Beaird, Inc.*, 253 NLRB 660, 673 (1980), I find that the Respondent's coupling its recitation relating to reduction of benefits with the alternative of the Union walking away or striking constituted a threat to reduce benefits. In this case, as in that case, the threat to insist upon reduction in benefits was "more that a recitation of a right, it is a threat to use reduction as an instrumentality to rid itself of the Union." Ibid. The Respondent made this explicit when it noted that, if the Union did not accept terms acceptable to the Company, the only option it had, other than strike, was to "walk away."

Having informed the employees that the Company would not give more than the employees received at Live Oak, the Respondent turned to the specter of a strike. The Respondent determined that the video relating to the strike at Trussville, Alabama, was insufficient to deliver its message, so it also projected overhead transparencies depicting damage and injury at Trussville. In further communications, the Respondent posted the same pictures that had been projected, including the notation "bulletholes" with arrows on the pictures denoting the damage. In these circumstance, the language of the Board in *Ideal Baking Co. of Tennessee, Inc.*, 143 NLRB 546, 552 (1963) is instructive:

> This unremitting effort on the part of the Respondent to impress upon the employees the dangers inherent in their selection of the Union as their bargaining agent, particularly the danger of job loss, followed up by the baleful representation of the prospect of violence, physical injury, and property damage as the ordinary result of voting for the Union in the election, was not an attempt to influence the employees by reason, but was an appeal to fear. Indeed, Respondent's entire preelection campaign was intimidatory in nature, and intended to convey the threat of job loss and physical violence should [the] Union win the election.

The Respondent threatened reduction of benefits to the level at Live Oak or a strike. Strikes repeatedly were portrayed as

[4] This case was remanded to the Board, but the relevant finding was not disturbed. *Kinney Drugs, Inc. v. NLRB*, 74 F. 3d 1419 (2d Cir. 1996).

involving violence, thereby playing upon employee fears. See *Louisburg Sportswear Co.*, 173 NLRB 678, 692 (1968) and *The Singer Co.*, supra. By threatening the inevitability of a violent strike the Respondent violated Section 8(a)(1).

There is no probative evidence of an unlawful threat of job loss, only statements relating to permanent replacement an economic strikers and to the inability of striking employees to pay bills. Thus, although the Respondent threatened the inevitability of a violent strike if the employees did not accept the reduction of their benefits to the level of Live Oak, I recommend that the portion of the allegation relating to job loss be dismissed.

The Spanish language video contains no unlawful statements. I recommend that the allegation that the video threatened job loss as a result of a strike be dismissed. See *Flamingo Hilton-Laughlin*, 324 NLRB 72, 103 (1997).

Division Manager Carlyle Ragans' remarks do not promise a wage increase. I recommend that this allegation be dismissed.

C. The Remaining 8(a)(1) Allegations

1. Creation of the impression of surveillance

In mid-September, when Employee Brenda Preston was passing out union leaflets at the plant gate, her supervisor, Eric Mady, passed within 16 feet of her. During the first week of October, Mady approached Preston as she was working and stated that "he was watching my every move I was making." He then commented that he had not seen her at work "the other day." Preston responded that she had to leave early because of a doctor's appointment. Mady repeated that he had his eyes on her and stated "I am watching you every move you make."

Mady acknowledged informing Preston that he was going to be "checking up on her" at the time he assigned her the job of scooping dry ice. He testified that he had made similar comments to employee Linda Robertson who had been assigned the ice scooping job prior to Preston but was unable to keep up. Mady testified that this was prior to his learning of Preston's union sympathies. He explained that the work flow on Preston's job was "sometimes . . . real light" and that he did not want her to "abuse some of the freedom that came with that position."

Robertson did not testify. Mady placed no date upon his acknowledged comments to Preston, testifying that it was when she was assigned the position of scooping dry ice, "sometime in 2000." He did not deny observing Preston handing out union literature at the gate. Although Mady testified that he told Preston that he would be "checking up on her," he did not deny stating that he was "watching … every move" she was making.

I credit Preston and find that Mady informed her that he was watching her every move after he had observed her handing out union literature. Contrary to the complaint allegation, I do not find that this comment establishes that the Respondent created an impression of surveillance of employee union activity. There is no evidence that Preston engaged in union activity when she should have been working and her handing out union literature at the gate was not covert. Rather, Mady's comment advised union adherent Preston that the Respondent was more closely monitoring her. More closely monitoring employees who have engaged in union activity violates Section 8(a)(1) of the Act. *General Fabrications Corp.*, 328 NLRB 1114, 1126 (1999). Confirmation that Respondent was more closely monitoring Preston is established by Plant Manager Johnson's testimony that Mady "caught" Preston in another department.

2. Restriction of movement

The plant at Douglas is roughly divided into two sections, the section where poultry is slaughtered and cleaned, and the section where the poultry is processed after being chilled. The former section is informally referred to as the "hot side;" the latter section is referred to as the "cold side." For more than 5 years, Preston had reported to her various work stations at the rear of the cold side of the plant by walking in a straight line from the time clock, through the hot side, and then turning left into the rear of the plant on the cold side. A diagram confirms that she could have turned left at the time clock, entered the cold side, and walked through the cold side to her work area. Although Preston referred to her route as a "shortcut," she acknowledged that it took longer to get to her work area by walking though the cold side only because she had to avoid "forklifts and stuff" and because of employees wanting "to talk to me."

In early October, Supervisor Mady called employee Preston off of her job and took her to the area when an office was being constructed. He informed Preston not to "go back through the main line," referring to the hot side. Preston asked what she had done, and Mady repeated, "Just don't go back through the main line." Preston explained that she had been doing so for more than 5 years and asked why "all of a sudden" he did not want her going that way. Mady stated that he did not want any trouble and that he would have to write her up if she did so.

Mady acknowledged that he was aware that employees cut through the hot side but that the supervisors on the hot side did not like it because it distracted their employees. The only supervisor Mady identified who had specifically complained was Wayne Register. Mady claimed that he "tried not to allow it" and that, since employees were supposed to remain in their work area, it was "the rule of thumb." Mady testified that, if he noticed someone cutting through, he would "mention it," but the only employee he identified as having spoken to in this regard was Preston. He did this after Plant Manager Johnson informed him that, during the meetings, he heard that some of Mady's employees were cutting through the hot side. Mady testified that Johnson did not name any employee.

Johnson testified that, during the discussion period following one of the meetings, some employees asked him why Preston was allowed to walk through "first process and second process," the hot side, "when no one else was allowed to." Johnson told them that he would check on it. That afternoon or the following morning he told Mady that "he had some employees going through . . . [the hot side] and he needed to put a stop to it." Johnson denied mentioning Preston's name. Thereafter, Johnson testified that Mady informed him "that he caught—he found Ms. Preston to be walking though there, and he told her that she couldn't do that."

There is no evidence of any plant rule or United States Department of Agriculture (USDA) regulation restricting employees in a food processing plant to specific departments.

Although Preston places her conversation with Mady in the first week of October, I find that the conversation did not occur until after October 11, after the Respondent began its antiunion meetings. I find it incredible that Johnson would not mention Preston by name to Mady since, according to his testimony, she was specifically named by the employees who complained that she was waling through their department "when no one else was allowed to." Johnson's slip of tongue that Mady informed him that he "caught … Ms. Preston," suggests that Johnson did identify Preston and confirms that Mady, consistent with his prior conversation with Preston, was watching her every move. The Respondent presented no explanation, much less a credible explanation, as to how one employee walking to her work station at the beginning of a shift could distract employees who were also reporting to work to their work stations. Supervisor Register did not testify. As already discussed, Johnson's actions establish the Respondent's willingness to respond to employee grievances raised at the antiunion meetings in its effort to dissuade them from supporting the Union. The Respondent, by restricting the movement of prounion employee Preston, violated Section 8(a)(1) of the Act.

3.Threat of plant closure

Employee Preston testified that Supervisor Angie Acorn, at the vending machine in the breakroom sometime in October, stated that she did not want the Union because the Company was having financial problems. Preston initially testified that Acorn asked if she was for the Union, but she thereafter modified this testimony, stating that Acorn said that she "hoped that I'm not" for the Union. Preston told her that she was for the Union. According to Preston, Acorn then stated that "we didn't need a union in because if it came up in here it was going to cause the place to shut down." There is no complaint allegation of interrogation.

Angie Acorn (now Angie Acorn Meeks) denied Preston's version of the conversation. She recalled that Preston asked her when the employees were going to get a raise and that she gave Preston the same response she gave to "everybody," stating, "I don't know when we're going to get a raise. The company is in a financial bind right now. I'm just glad that we still have a job." Meeks acknowledged that she followed this comment by stating that she did not "feel like the Union is what we need in this plant," that everyone "needed to work together to get the Company back to number one."

Acorn acknowledged that her former mother-in-law had worked in a plant that was unionized and had closed, but she testified that she did not mention this to Preston. When testifying as a witness for the General Counsel, Preston was asked by Counsel for the General Counsel whether Acorn made any reference to her former mother-in-law, and Preston responded that she did not. Thus, whatever the basis for counsel's inquiry, there is no evidence that Acorn's former mother-in-law was mentioned in the conversation.

Although Preston was, basically, a credible witness, she was uncertain with regard to dates and inclined to state her impressions, as when she testified that Crawford made a comment regarding employees' pay rates going down in all of the meetings. No other witness attributed to Crawford a statement regarding loss of wages in all of the meetings.

Acorn was totally credible. Her response to Preston's inquiry regarding when employees might expect a raise, the same response she gave to "everybody," concluded with the statement that she was "just glad to have a job." Whether Preston misunderstood the response or interpreted it to be a suggestion that if the employees selected the Union she would not have a job is immaterial. I credit Acorn. I recommend that this allegation be dismissed.

4. Threat of refusal to hire

On Sunday afternoon, November 5, Chris Johnson appeared on a radio call-in show on station WOKA-AM, a local radio station with a Spanish format. A transcript, the accuracy of which all parties stipulated, of the broadcast reveals that the radio host received a call regarding how, if the Union came in, it would affect "totally everybody." She asked Johnson to comment on that. Johnson responded as follows [* denotes break in which Johnson's comments were translated into Spanish.]:

> Yes, I have one comment. An employee made a point to me last week,* something that I never though of.* They made the comment that, well if Gold Kist does vote the Union in* and I quit my job because of it,* its going to be very hard for me to get a job anywhere else in Douglas.* Because on my resume it will have my last employer was Gold Kist and these other industries don't want people who will, would, possibly bring a union into their work place.* It would be against the law for that company to ask you what your affiliation was with the Union, whether you wanted it or not.* So they may not be willing to take a chance on you.

No party contended that the translation into Spanish was inaccurate. Johnson acknowledged that at least seven or eight Spanish speaking employees commented to him the following day that they had heard the broadcast.

Johnson, although purportedly repeating the "point" made by an unidentified employee, cited no objective evidence that "other industries don't want people who will, would, possibly bring a union into their workplace." His statement that "they may not be willing to take a chance on you," is speculation, not objective fact. Johnson's comment was not based upon objective evidence. It was a threat that other employers would not hire former employees of the Douglas plant if it were unionized. See *UBX International*, 321 NLRB 446, 452 (1996). In making this threat, the Respondent violated Section 8(a)(1) of the Act.

5. Promise of benefit

On the day of the election, about 3:30 or 4 p.m., Unit Manager David Kirby approached Employee Hattie Deese and asked "Do you have your mind made up what you're going to do?" Deese responded that her mind was made up. Kirby then stated that, "if the Union come in, I can't make your job better. . . . But if the Union don't come in, your job will be better." Kirby testified that, when the flow of defective chickens increased in Deese's work area, he had provided additional help on that line which made Deese's job easier, i.e. "better." Deese

was not recalled to dispute this testimony which is consistent with assuring smooth production.

The complaint does not allege interrogation. Kirby admits speaking with Deese on the day of the election. He did not deny asking Deese if her mind was made up, but he recounted a conversation that does not contain that question. He testified that Deese asked if he would "be able to supply the help in that position where she was at" and that he said "Yes," noting that the election would not affect how he would handle that process. He then testified that he informed Deese of his experience in a union facility where "I had to work through a shop steward."

Kirby's testimony became contradictory on cross examination when he denied that Deese had ever expressed a need for additional help. Thereafter, he again acknowledged that Deese had asked for help by repeating that she asked if he was "still going to be able to supply help back there." He again asserted that he had responded "Yes." Kirby admitted that he also expressed to Deese "that my experience with the union was that the shop steward was going to be present if she had any complaints." This acknowledgment is consistent with Deese's testimony that Kirby stated that, "if the Union come in, I can't make your job better."

I credit Deese. Although the complaint alleges that the Respondent promised to make Deese's job better (easier) if the employees rejected the Union, the probative evidence establishes that the Respondent had provided assistance to Deese when she had needed it, and that Kirby told her that this would continue, that "if the Union don't come in, your job will be better," but then threatening her that "if the Union come in, I can't make your job better." Thus, rather than promising a new benefit, Kirby threatened the withdrawal of an existing condition of employment if the employees selected the Union in order to dissuade employees from supporting the Union in violation of Section 8(a)(1) of the Act.

D. The Reduction of Overtime of Brenda Preston

1. Facts

In the 35 weeks prior to September 1, Preston worked an average of 5.46 hours of overtime per week. Some weeks she worked no overtime. During 1 week in June she worked 16.8 hours of overtime. In the 17 weeks after September 1, Preston worked a total of 16.2 hours of overtime. It appears that 8 of those hours were for working on Labor Day.

Preston testified that, about the first week of October, Leadman James Clark informed her that he could not let her work overtime any more, that "his supervisor had come to him and told him not to let me work over." In what Preston recalled as a second conversation, Clark informed her that the supervisor knew she was engaging in union activity, that she was being watched, and "to be careful." He noted that Adolph Paulk was one of "them," the supervisors.

Leadman Clark confirmed that he informed Preston that she could not work overtime on the direct order of Unit Manager David Kirby, who denied knowing Preston. According to Clark, Kirby told him, "Don't use the girl that you been keeping over there. Don't keep her anymore." He assumed Kirby was referring to Preston since she regularly worked overtime in the area "over there" to which Kirby had referred, "that's the spot she usually worked at when she was on the line." Clark testified that he knew of Preston's involvement with the Union and assumed that was the reason she could not work overtime. He testified that this was his personal assessment and that he therefore told Preston, at the same time he informed her that he could not use her anymore, "Be careful. Do things right. Don't . . . get in no trouble. You may be being watched." He denied mentioning Supervisor Paulk.

Thereafter, Clark testified that he was directed by his supervisor, Corey Colson, to cut back on overtime. The only other employees that Clark specifically identified as being affected were a Hispanic employee whose name he did not know and employee Betty Shaw.

Kirby testified that he was simply carrying out an order of Plant Manager Johnson. He did not mention his conversation with Clark, testifying only that he informed his subordinates that all overtime was to be cut out, even if this meant "closing down a vital operation that needed to be staffed on second shift." I find that testimony incredible. It defies any logic regarding maintaining production, and it is refuted by documentary evidence revealing that overtime continued to be worked in all departments. A memorandum for Johnson dated August 17, requested only that unit mangers inform him of how much overtime they needed to budget.

Johnson testified that he needed to cut costs, that cutting overtime was one way to do that. Leadman Clark testified that he was aware of three employees, Preston, Shaw, and the Hispanic lady, who had regularly worked overtime. The Respondent introduced the overtime records of several employees some of whom, according to Johnson and contrary to Kirby, had to work overtime to perform critical functions, and the records of employees Darlene Alls, JoAnn Edwards, and Mae Carter whose overtime was cut. The records of Shaw and the Hispanic lady were not introduced. When Preston was questioned regarding other employees she knew who had ceased working overtime, she explained that employee Clara Ross quit working overtime because she got a part-time job and that employee Tracy Smith stopped in order "to take care of her kids." Neither Alls, Edwards, nor Carter testified; thus the record does not establish the circumstances regarding the cessation of their overtime.

The General Counsel introduced records showing overtime by department. Johnson acknowledged that there was no way to tell in which department a particular employee worked overtime, the overtime credited to the employee reflects the employee's assigned department. There was no diminution in the overtime charged to Department 143, the department to which Preston had been assigned in August. The July figure, 1,737, is the lowest of the 6-month period of July through December. The August figure of 2,063, the month in which Johnson issued his memorandum, is lower than the September figure of 2,473 hours; however it appears that employees who worked on Labor Day were paid overtime which may have affected that figure. The October figure is 1,910, November is 2,103, and December is 2551. Turning to the overall figures for all department, the total number of overtime hours worked each month at the plant, rounded to the nearest 100, in the year 2000, were as follows:

January	33,000	July	8,700
February	10,100	August	11,200
March	13, 900	September	18,400
April	8, 900	October	7,800
May	13, 800	November	12,500
June	25,600	December	10,200

As the foregoing figures reveal, over the entire year the overtime average was 13,350 per month. The months of January, June, and September appear to be aberrations. Fewer than 10,000 hours of overtime were worked in April and July, prior to Johnson's memorandum of August 18. After the memorandum, overtime fell below 10,000 hours only in October.

2. Analysis and concluding findings

In assessing the evidence under the analytical framework of *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), I find that Preston engaged in union activity and that the Respondent was aware of that activity. Preston placed her conversation with Clark in the first week of October.[5] The Respondent, in its brief, states that Preston's overtime was reduced "beginning the week ending September 22." This would have been after she leafleted at the plant gate in mid-September. Regardless of whether the reduction in overtime occurred in late September or early October, Preston's union activity, as confirmed by Clark's testimony, was common knowledge. The Respondent's animus is established by the Section 8(a)(1) violations found herein. The elimination of Preston's overtime was an adverse action affecting her terms and conditions of employment. The General Counsel established a prima facie case.

The Respondent adduced no probative evidence that Preston's overtime would have been eliminated in the absence of her union activity. Kirby did not explain why he singled out one employee, which he did when he informed Clark: "Don't use the girl that you been keeping over there." The Respondent did not present the timesheets of the two other employees who Clark testified had regularly received overtime. The records of overtime for Department 143, the department to which Preston was assigned, reflect no reduction in overtime after August. The overall plant figures do not support Unit Manager Kirby's assertion that he would close down a vital operation rather than authorize overtime on second shift.

Leadman Clark assumed that the Respondent's actions were prompted by Preston's union activity and warned her to be careful. Clark's statements to Preston are not attributable to the Respondent since he is not a supervisor, and he testified that that no supervisor stated that Preston's union activity was the reason for the action, that he simply made that assumption. Even though Clark's statements to Preston are not attributable to the Respondent, I find that his assumption was well founded. The General Counsel presented a prima facie case and the Respondent has not established by probative evidence that it would have taken the same action in the absence of Preston's union activity. I find that by eliminating the overtime of Preston because of her union activity the Respondent violated Section 8(a)(3) of the Act.

E. The Objections to the Election

The Petitioner filed objections to the election, many of which are coextensive with the allegations of the complaint. The Petitioner urges that I also find certain conduct that is not coextensive with any complaint allegation to be objectionable.

1. Objection 5 [from page 3]: Threat of deportation[6]

The only evidence proffered in support of this objection was the testimony of Jose Ponce who testified he overheard Supervisor Tonya Gifford state to a group of Hispanic employees that "you better not vote for the Union or you're being shipped back to Mexico, immigration can come for you and ship you back to Mexico." Ponce did not place himself in the group of employees being threatened. No employee from the group testified. Gifford denied the threat. In the absence of corroboration of Ponce of the threat that Gifford credibly denied making, I recommend that this Objection be overruled.

2. Objection 6 [from page 3]: Interrogation

The Petitioner alleges two instances of interrogation. The first is based upon Preston's initial testimony that Supervisor Acorn asked if she was for the Union. Preston modified this testimony, stating that Acorn stated that she hoped Preston was not for the Union, but Preston disabused her of any such hope by stating that she was for the Union. I have not credited Preston's account of this conversation and I find that no coercive interrogation occurred.

The second instance arises from the conversation in which Deese states that Kirby asked her "Do you have your mind made up what you're going to do?" There is no mention of the Union or the election in the question. Kirby could have been referring to when Deese intended to go to supper. Deese responded that "the Lord's and my mind's made up."

I am mindful that immediately after this colloquy Kirby threatened Deese with loss of a benefit, the help he provided when the flow of chickens increased, if the employees selected the Union. Nevertheless, I cannot speculate with regard to Kirby's intent when he asked a question that made no mention of the Union, the Employer's antiunion meetings, or the upcoming election. Similarly, I cannot speculate with regard to Deese's innocuous reply that revealed absolutely nothing about her union sympathies and could have related to the television show that she intended to watch that evening. Neither of the foregoing incidents were alleged in the complaint. I recommend that this Objection be overruled.

[5] Although Preston had only 8 hours of overtime in September, apparently for working on Labor Day, the absence of overtime the other 3 weeks in September does not contradict her testimony that Clark spoke to her during the first week of October. There were several weeks that Preston worked no overtime, including 3 consecutive weeks at the end of June and beginning of July. Neither Clark nor Kirby placed a date on their conversation.

[6] The Objections are misnumbered, containing on page 2 Objections 3, 4, 5, and the beginning of 6 relating to a threat of refusal to hire. Page 3 contains the remainder of Objection 6 from page 2, a separate Objection 4 and 5, and an Objection 6 relating to interrogation.

3. Objection 12: Informed employees of acts of violence

On November 6, employee Preston heard from her nephew that there had been a physical altercation between Union Representative Eric Taylor and the son of the owner of Staffmate, the company that provided temporary labor to Gold Kist. On November 7, while walking to the nurse's station, Preston overheard Johnson, the owner of Staffmate, and his son, discussing that the son had hit Taylor and laughing. Preston testified to no specific comments in the conversation, noting that she was "way off distant." No evidence was presented concerning the altercation. The record does not reflect how the altercation occurred and whether it related to the Union, a sports team, or some other issue. The Petitioner argues that this "dissemination of information of physical assaults" when coupled with the Respondent's threats of strike related violence destroyed the laboratory conditions necessary for a fair election.

In the absence of any evidence relating to the subject of the altercation, the manner in which it became physical, and the culpability of either party, I have no basis upon which I can make a finding. Preston's overhearing from a distance a portion of a discussion about an altercation that she had learned about from her nephew does not constitute objectionable conduct by the Employer. I recommend that this Objection be overruled.

4. Objection 14: Use of ballot replicas

At the final meetings with employees on November 6 and 7, a facsimile of a ballot was projected on the overhead projector with the "NO" box marked with an X. There is dispute as to whether the facsimile was a crude facsimile with the words "Secret Ballot" and a "Yes" and "No" box as reflected by Respondent's Exhibit 16 or a more sophisticated facsimile, bearing the words United States Government, National Labor Relations Board, Official Secret Ballot, as reflected by General Counsel's Exhibit 3A. Assuming that it was the latter ballot, I note that the Petitioner on this facsimile is identified as "The UFCW Union." Consistent with established Board practice, I am certain that the actual ballot correctly identified the Petitioner as United Food and Commercial Workers Union, Local 1996, AFL–CIO.

The Petitioner, citing *3-Day Blinds*, 299 NLRB 110 (1990) argues that the "altered official NLRB ballot . . . constitutes objectionable conduct." *3-Day Blinds* involved the distribution of facsimile ballots that the petitioner therein argued gave employees the impression that the Board favored the employer. The Board noted that the altered ballot did not, on its face, identify the source. The Board stated that it would, therefore, examine "the nature and contents of the material in order to determine whether the document had a tendency to mislead employees into believing that the Board favors one party over the other …[and it would consider] extrinsic evidence." Id at 111. In the instant case there was no document. An overhead transparency was projected in the same manner as numerous other transparencies had been similarly presented by the Employer in its antiunion campaign. Notwithstanding the absence of any identification on the transparencies, I am satisfied that any employee seeing the transparency, not a document, would make no assumption that the Board had any involvement in what was clearly the Employer's antiunion presentation. I recommend that this Objection be overruled.

I have found that, after the petition was filed and prior to the election, the Respondent engaged in violations of Section 8(a)(1) and (3) of the Act. This conduct parallels various objections to the election filed by the Union. Objection 1 alleges the solicitation of grievances with an implied promise to remedy them, Objection 3 alleges discrimination against prounion employees, Objection 4 [from page 2] alleges threats of loss of benefits, Objection 4 [from page 3] alleges the threat of inevitability of strikes and strike violence),[7] Objection 5 [from page 2] alleges the restriction of movement of prounion employees, Objection 6 [from page 2] alleges the threat of refusal to hire by other employers, and Objection 15 alleges other acts and conduct which would include the more closely monitoring of prounion employees.

I find that the foregoing violations of the Act that occurred during the critical preelection period and correspond to the Union's objections interfered with the employees' free choice of representation and that that the election must be set aside and a new election held.

CONCLUSIONS OF LAW

1. By soliciting grievances and promising to remedy them in order to dissuade employees from supporting the Union, by threatening the loss of benefits and the inevitability of strikes and strike violence if employees selected the Union as their collective-bargaining representative, by more closely monitoring and restricting the movement of prounion employees, and by threatening that other employers would refuse to hire employees because of their union activities, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By depriving Brenda Preston of overtime work the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily deprived Brenda Preston of overtime work, it must make her whole for any loss of earnings and other benefits, computed on a quarterly basis from September 18, 2000, until her overtime assignments are restored, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Charging Party, citing *Fieldcrest Cannon, Inc.*, 318 NLRB 470 (1995), has requested extraordinary remedies, including the reading of the notice, identifying current employees, and access. In that case the Board found "numerous, pervasive, and outrageous" violations of the Act. The violations

[7] Even if I had found no 8(a)(1) violation, the Employer's creation of an atmosphere of fear constitutes objectionable conduct. *Fred Wilkinson Assoc.*, 297 NLRB 737 (1990).

herein are significant and affected the entire unit, but they are not of the same character as the more than 40 independent violations of Section 8(a)(1) of the Act and multiple discharges found *Fieldcrest Cannon*. I agree that the notice posting should be in both English and Spanish. I deny the request for other nontraditional remedies.

The Respondent must post an appropriate notice. In view of the diversity of the work force, I recommend that the notice be translated into Spanish.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

ORDER

The Respondent, Gold Kist, Inc., Douglas, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Soliciting grievances and promising to remedy them in order to dissuade employees from supporting United Food and Commercial Workers Union, Local 1996, AFL–CIO.

(b) Threatening the loss of benefits if employees select the Union as their collective bargaining representative.

(c) Threatening the inevitability of strikes and strike violence if employees select the Union as their collective-bargaining representative.

(d) More closely monitoring and restricting the movement of prounion employees.

(e) Threatening that other employers would refuse to hire employees because of their union activities.

(f) Depriving prounion employees of overtime work.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Make Brenda Preston whole for any loss of earnings and other benefits suffered as a result of the discrimination against her in the manner set forth in the remedy section of the decision.

(b) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its facility at Douglas, Georgia, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 18, 2000.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS ALSO ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

IT IS FURTHER ORDERED that the election is set aside and Case 12–RC–8663 is severed from Cases 12–CA–21196 and 12–CA–21231 and remanded to the Regional Director to conduct a second election when she deems the circumstances permit a free choice.

Dated, Washington, D.C. October 15, 2001

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the

National Labor Relations Board

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights:

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT solicit your grievances and promise to remedy them in order to dissuade you from supporting the Union.

WE WILL NOT threaten you with the loss of benefits or that strikes and strike violence are inevitable if you select the United Food and Commercial Workers Union, Local 1996, AFL–CIO, or any other labor organization as your collective bargaining representative.

WE WILL NOT more closely monitor and restrict the movement of prounion employees.

WE WILL NOT threaten that other employers would refuse to hire you because of your union activities.

WE WILL NOT deprive you of overtime because you support the Union and WE WILL make Brenda Preston whole for any loss of earnings and other benefits suffered as a result of our discrimination against her.

[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed by Section 7 of the Act.

GOLD KIST, INC.